IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 12TH SEPTEMBER 2006 / 21ST BHADRA 1928

ST.Rev..No. 229 of 2004()

TA.216/1995 of S.T.A.T.ADDL.BENCH,ERNAKULAM
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REVISION PETITIONER/RESPONDENT/REVENUE:

STATE OF KERALA, REP. BY DEPUTY COMMISSIONER (LAW), COMMERCIAL TAXES, ERNAKULAM.

BY GOVERNMENT PLEADER SRI. V.V.ASOKAN.

RESPONDENTS: APPELLANT/ASSESSEE:

M/S. ANNA ALUMINIUM COMPANY, ALUVA.

BY

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 12/09/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR & K.M.JOSEPH, JJ.

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7.Aluminium and house hold utensils made of aluminium and aluminium alloys.	At the point of first sales in the State by a dealer who is liable to tax under section 5.	6
8.Aluminium products & products of Aluminium alloys not elsewhere mentioned in this Schedule.	do.	10

Copy of the earlier order of the Tribunal relied on by the Tribunal in the impugned order is produced by the Special Government Pleader before us. The finding of the Tribunal in the earlier orders is extracted hereunder.

> "Any article useful or necessary in a household is utensil. Baking dish is useful in household and dairies etc. They are also used to collect rubber latex. Though it is used to collect rubber latex it does not cease it's character as utensils. Therefore, we are of the view that the item 'baking dishes' would come under 'utensils' taxable at lower rates. Order accordingly."

We are of the view that the above finding of the Tribunal is thoroughly absurd for more than one reason. In the first place, it is common

knowledge that the Aluminium tray used in rubber plantations is designed mainly for use by rubber planters for coagulation of field latex with Acid to separate water from rubber. The Tribunal in the impugned order also concedes that the main use of the product is by rubber planters. It's size and dimensions are such that, it cannot be used for baking in baking ovens used in any house as claimed by the respondent assessee and we are of the view that the claim is thoroughly bogus. We do not know on what basis the Tribunal has assumed use of the item as a baking tray in houses. At the maximum it can also be used for baking large quantities of food stuff in hotels, bakeries etc., for sale. Classification has to be made with reference to ordinary use of the item and not with reference to its extra ordinary use by a rare customer or its possible use. Household utensils are items used in houses and not those that are made for industrial use. When the predominant use of the item is admittedly in rubber plantations, it can never be held to be a household utensil. The assumption made by the Tribunal in the earlier order referred above and their findings are perverse. It is strange that the department has not challenged the earlier order of the Tribunal and

we are of the view that it is the height of irresponsibility on the part of the departmental officers in accepting those orders which were patently absurd and against the interests of Revenue. We therefore hold that the item is rightly assessed as an Aluminium product by the Assessing Officer under Entry 8 of the First Schedule to the KGST Act.

Accordingly, we reverse the order of the Tribunal and sustain the assessment on the product at the higher rate.

(C.N.RAMACHANDRAN NAIR, JUDGE)

(K.M. JOSEPH, JUDGE)

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K.S.RADHAKRISHNAN & K.M.JOSEPH, JJ.

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K.M.JOSEPH, JJ.

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JUDGMENT

Dated this the day of February, 2006.